

**FILED**

FEB 27 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 Victor Hernandez K-316 59  
2 P.V.S.P. Fac D-3-128-L  
3 P.O. Box 8504  
4 Coalinga Ca 93210

5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA

JF

(PR)

CV 08

1154

8 IN re Victor Hernandez  
9

10  
11 MEMORANDUM OF POINTS AND AUTHORITIES  
12 APPEAL FROM THE HONORABLE PAUL BERNAL JUDGE OF THE SANTA CLARA  
13 SUPERIOR COURT.

14  
15 STATEMENT OF THE CASE

16 \_\_\_\_\_ Petitioner requests this Court please take Judicial Notice  
17 of the fact that the petitioner is requesting appointment of legal  
18 counsel because he is unable to read or write at a level to fully  
19 understand these proceedings. Petitioners exhibit A is a copy of his  
20 most recent tabe results which show his reading score is 3.6 and  
21 language score of 2.9.

22 On 5-10-06 petitioner sent a request to the inmate records  
23 office after a conversation with another inmate regarding time  
24 earning credits. The petitioner was sent a copy of a flyer that had  
25 been posted in the law library advising inmates of People V. Stofle  
26 1996 45 Cal App 4th 417 advising inmates of zero credit ability.

27 No additional effort was made to contact inmates who could not  
28

1 read or write and petitioner was never notified of any change in  
2 the law.

3 THE SUPERIOR COURT BASED ITS OPINION ON THE FACT  
4 PETITIONER HAD PREVIOUSLY FILED A PETITION FOR RELIEF.

5 The Superior Court reasoned that the petitioner had filed a  
6 petition for relief in March of 2004 and did not mention his claim  
7 now presented. The petitioner urges that he never filed the habeas  
8 petition and that it was somehow placed in the record. In addition  
9 it is not his hand writing nor did he authorize it.

10 The petitioner urges that his alleged 2004 habeas petition  
11 is of no interest to the matter before the court because there  
12 was no response to his formal request to the department of Correct-  
13 ions until 5-12-06. Petitioner could not have raised this claim  
14 because he was unaware of the change in the law.

15 The petitioner has asked this court to appoint counsel to  
16 represent him because it appears that someone is taking great  
17 advantage of the fact that he cannot read and write at a level to  
18 present his claims to the court. While petitioner has had some  
19 help in presenting this matter to the court because of need for  
20 a complete investigation he is requesting counsel be appointed. He  
21 has provided his most recent test scores to confirm that he is  
22 unable to understand the complex proceedings before the court.

23 I Victor Hernandez declare under the penalty of perjury that the  
24 information I have provided is true and correct.

25  
26 Filed this day of 2008

27 Victor Hernandez  
28 